

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

DAVID L. DEARING,
Plaintiff,

vs.

L. EAGAN, *et al.*,
Defendants.

Case No. 2:17-cv-02754-GMN-VCF

**REPORT AND RECOMMENDATION FOR
DISMISSAL WITH PREJUDICE**

On November 22, 2017, the Court granted Plaintiff David Dearing's application to proceed *in forma pauperis*. (ECF No. 6). On December 12, 2018, the Court dismissed Plaintiff's amended complaint without prejudice. (ECF No. 11). The Court found that each of Plaintiff's counts failed to state a claim. (*Id.* at 2-4). The Court gave Plaintiff until January 18, 2019 to file a second amended complaint and warned that "[f]ailure to timely file a Second Amended Complaint that addresses the deficiencies noted in this Order may result in a recommendation for dismissal with prejudice." (*Id.* at 4).

Plaintiff has not filed a second amended complaint or an objection to the Court's Order. For the reasons discussed in the Court's December 12, 2018 Order (ECF No. 11), Plaintiff's amended complaint should be dismissed with prejudice.

ACCORDINGLY, and for good cause,

IT IS RECOMMENDED that this action be DISMISSED WITH PREJUDICE and Judgment entered, accordingly.

NOTICE


Pursuant to Local Rule IB 3-1, any objection to this Order must be in writing and filed with the Clerk of the Court within 14 days. The Supreme Court has held that the courts of appeal may determine that an appeal has been waived due to the failure to file objections within the specified time. *See Thomas*

1 v. *Arn*, 474 U.S. 140, 142 (1985). This circuit has also held that (1) failure to file objections within the
2 specified time and (2) failure to properly address and brief the objectionable issues waives the right to
3 appeal the District Court's order and/or appeal factual issues from the order of the District Court. *Martinez*
4 v. *Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991); *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th
5 Cir. 1983).

6 Pursuant to LSR 2-2, the Plaintiff must immediately file written notification with the court of any
7 change of address. The notification must include proof of service upon each opposing party or the party's
8 attorney. **Failure to comply with this Rule may result in dismissal of the action.** (See LSR 2-2).

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10 IT IS SO RECOMMENDED.

11 DATED this 24th day of January, 2019.

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15 CAM FERENBACH
16 UNITED STATES MAGISTRATE JUDGE
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